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STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS

COMMENTS ON COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCK

(Submitted by the delegation of Japan)

1. The issue of compatibility and coherence between national and international conservation measures for the same stock is sensitive and very important. Without addressing this issue properly, we may not make any progress in the appropriate conservation and management of straddling fish stocks and highly migratory fish stocks.

2. All the delegations to the present Conference agree on the necessity of compatibility and coherence between national and international conservation measures for the stocks which reside in and/or migrate within the waters under national jurisdiction and on the high seas. But the question of how we can secure compatibility and coherence remains.

3. "Due regard" to the needs, interests and practices of both distant-water fishing States and coastal States is the point of departure for our discussion on how to establish the fundamental principles for the achievement of compatibility and coherence. The Japanese delegation would like to refrain from making legal arguments, but it is our belief that the sovereign rights of coastal States must not impinge on the freedom of high seas fishing States. Similarly, the freedom of fishing on the high seas must not impinge upon the sovereign rights of coastal States within their national jurisdictions. These two concepts should coexist and be complementary to each other. Each party must cooperate with "due regard" to the other.

4. A mechanism of cooperation to ensure "due regard" between coastal States and high seas fishing States should be established through regional or subregional organizations open to all parties with participation on an equal footing. What then should these organizations set out to do? First the organizations should assess the conditions of the fish stocks with which they are concerned. With regard to stock assessment, regional organizations should base their assessments on the full range of migration of the stocks, assess

their biomass and set an allowable biological catch (ABC), as appropriate. As for straddling stocks, many coastal States have already conducted scientific research. Therefore, the regional organizations or, at least, the scientific committees of the organizations, should make their assessment with "due regard" to what action coastal States have taken in the field of conservation and management. In many cases in practice, the extent and quality of scientific assessments by coastal States deserves our respect. On the other hand, for the sake of fair and high quality assessment, regional organizations must be empowered to recommend whatever they deem to be appropriate, even if such recommendations differ from those chosen by the coastal States. Since stock assessments covering the whole range of the stocks are essential to their conservation and management, such activities by the regional organizations are beneficial, not only for high seas fishing States, but also for the coastal States joining the organizations. Article 61 (5) of the United Nations Convention on the Law of the Sea stipulates the need for information exchange by all States, including coastal States, through appropriate regional organizations.

5. When we consider conservation and management measures for the stocks, the situation becomes a little more difficult and complicated. When they formulate measures, regional organizations should take into consideration all relevant factors, such as regional characteristics, stock conditions, fishing practices and the social/economic needs of fishermen. Is it always necessary to take exactly the same measures both in the waters under national jurisdiction and on the high seas? The Japanese delegation thinks it is not. Measures could vary according to the different factors which pertain to each region. It is not therefore appropriate to set a global standard for this particular matter. We should let competent regional organizations set their own standards.

6. Another issue which regional organizations should address is the establishment of a mechanism for the development of a minimum standard of appropriate conservation and management measures applicable to waters both inside and outside of national jurisdiction. In reality, however, it is difficult to set such a standard because the economic and social factors of fisheries vary between areas. Therefore, again, we would like to stress the need for "due regard" to the realities of each State. Compatibility and coherence with "due regard" to the needs and interests of each State should be maintained as a standard. A sense of burden-sharing on an equitable basis would be essential in this undertaking.

7. In particular, as highly migratory fish stocks may have a range of migration through waters under the national jurisdiction of more than 10 countries and the adjacent high seas, it is not practical or wise to set separate conservation and management measures for the territorial and extraterritorial waters or separately for different zones under national jurisdiction. Therefore, competent regional organizations should be in a position to formulate uniform measures to be taken throughout the migratory range. Existing competent regional organizations, such as the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC), actually formulate coherent measures throughout the migratory ranges for the species they manage.

8. How can we allocate a total allowable catch between coastal States and high seas fishing States? This is a fundamental and essential question of who benefits. The Japanese delegation does not wish to deal with this issue in detail, but again, the "due regard" principle is essential. For example, with respect to highly migratory species, how can we expect to implement cooperative relationships between coastal States and high seas fishing States under circumstances whereby the amount of fish to be taken in the exclusive economic zones have been determined unilaterally by coastal States and the fish available to the high seas fisheries have been automatically reduced? Conversely, can we expect cooperation from coastal States when such coastal States can derive no benefits from fish migrating into their zones? Mutual cooperation with "due regard" for each State should be a starting point.